Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal –State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 99-200
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

T-MOBILE FURTHER NPRM REPLY COMMENTS AND STAFF STUDY COMMENTS

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T-MOBILE FURTHER NPRM REPLY COMMENTS
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T-Mobile USA, Inc. ("T-Mobile," formerly VoiceStream Wireless Corporation) submits these consolidated reply comments in response to the Commission's supplemental inquiry concerning the possible replacement of the current revenue-based universal service fund ("USF") contributions methodology with a connections-based methodology, and comments on the Staff Study regarding the alternative contributions methodologies.[1]

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1 *See Federal-State Board on Universal Service,* CC Docket No. 96-45, *Second Further Notice of Proposed Rulemaking,* FCC 02-329 (Dec. 13, 2002)("*Second FNPRM*"); *Public Notice,* Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies, CC Docket No. 96-45, FCC 03-31 (Feb. 26, 2003)("Staff Study"). The FCC has encouraged parties to file a single document in response to these matters. *See Extension/ Consolidation Order,* DA 03-1009 (March 27, 2003).

INTRODUCTION AND SUMMARY

The Commission's current USF contributions methodology review has taken on considerable importance because the USF contribution factor has become so large and will, absent Commission reform, become even larger in the near future. Currently, the USF contribution factor is 9.1 percent.[2] There are projections that, absent reform, the USF contribution factor will exceed 11 percent within the next three years.[3] The goals of universal service clearly are not served if USF and other government fees paid by consumers become so sizable that low-volume (often, low-income) consumers in particular begin dropping telecommunications services as a result. In this regard, courts have held that excessive USF fees "can itself violate . . . the Act" by "causing rates unnecessarily to rise, thereby pricing some consumers out of the market."[4]

Chairman Powell stated some years ago that a program as immense as the USF "should be subject to a constant and searching scrutiny":

> [W]e must diligently police the growth of universal service programs, lest such growth imperil carriers' efforts to bring the benefits of competition and innovation to consumers. In particular, we must limit carriers' contributions to universal service to the amounts absolutely necessary to fulfill the universal service statutory mandate. If subsidy programs get out of hand, they can dramatically raise competitors' costs and skew the economic incentives to enter markets.[5]

Although the Commission is currently reevaluating the services that should be supported by universal service and an inquiry is underway to examine fraud in the schools and libraries program,

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2 *See Public Notice,* Proposed Second Quarter 2003 Universal Service Contribution Factors, DA 03-689 (March 7, 2003).

3 *See* National Exchange Carrier Association, *Trends in Telecommunications Cost Recovery: The Impact on Rural America*, at 37-46 (Oct. 2002), *cited in* AT&T Comments at n.25. The Office of Management and Budget ("OMB") predicts that, absent FCC reform, total USF outlays will increase by $527 million annually in the next three years. *See* note 16 *infra.*

4 *Alenco Communications* v. *FCC,* 201 F.3d 608, 620 (5th Cir. 2000).

5 Separate Statement of Michael K. Powell, *Fourth Universal Service Reconsideration Order*, 13 FCC Rcd 5318, 5513 (1997).

the Commission has never examined the total level of USF disbursements and what American consumers can reasonably afford to pay in USF fees.

It is time for the Commission to reexamine the level of USF disbursements. One year ago, T-Mobile asked the Commission to freeze USF outlays (then assessed at the rate of 7.3 percent) while it reevaluates the sufficiency of all universal service programs.[6] Had the Commission adopted this proposal, American consumers would have paid during the second quarter of 2003 alone *over $300 million less in USF contributions* – money that could instead have been used to help jumpstart our nation's economy.

I. A CHANGE IN THE CONTRIBUTIONS METHODOLOGY WILL NOT FIX THE PROBLEM WITH THE USF PROGRAM: UNCHECKED GROWTH IN USF OUTLAYS

The Commission expresses "concern regarding the long-term viability of any revenue-based system."[7] It states that changes in the market have led to "fluctuations in the contribution base and rising contribution obligations."[8] It notes that certain parties (those hoping to pay less under a different approach) claim that a connections-based methodology "will best ensure the long-term viability of the Commission's universal service mechanisms as the telecommunications market continues to evolve."[9] No facts, however, are recited in support of these statements. Instead, the Commission appears to be influenced by the arguments of parties like AT&T, which asserts that the USF program faces "a death spiral" of "dramatically shrinking" contributions base with, as a result, "ever-increasing contribution factors."[10]

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6 *See* VoiceStream Reply Comments at 12-20 (May 13, 2002)

7 *Second FNPRM* at ¶ 3.

8 *Ibid.*

9 *Id.* at ¶ 5.

10 AT&T Comments at 2, 3, 10, 11, 15, 17, 18 and 27. *See also* AT&T Comments at 2 and 12 (April 22, 2002); Coalition for Sustainable Universal Service at 2, 3, 4, 11, 19, 20 and 21 (May 13, 2002).

There are no facts suggesting that the USF contribution base – interstate and international end user revenues – is unstable, much less "dramatically shrinking" as AT&T claims. The contribution base during the current quarter is $17 billion.[11] The contribution base four years ago, during the second quarter of 1999, was $18.3 billion.[12] Thus, over the past four years, the USF contribution base has decreased by 7.1 percent – or less than two percent annually. This small decrease is not surprising as the data only confirm that competition is working (*i.e.,* consumers are paying lower prices today compared to four years ago).[13]

While the USF contribution base has decreased slightly over the past four years, the USF contribution factor has increased dramatically. The reason for this dramatic increase is that USF disbursements nearly doubled during this period:

USF OUTLAYS HAVE INCREASED 83% IN THE LAST FOUR YEARS

Second Quarter 1999	$838,700,000[14]
Second Quarter 2003	$1,534,075,000[15]

The Office of Management and Budget ("OMB") has projected that, absent changes in the USF program, total USF outlays will likely grow by another $658 million annually during the next four years.[16]

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11 *See Public Notice,* Proposed Second Quarter 2003 Universal Service Contribution Factors, DA 03-689 (March 7, 2003).

12 *See Public Notice,* Proposed Second Quarter 1999 Universal Service Contribution Factors, DA 99-455 (March 4, 1999).

13 According to the Bureau of Labor Statistics, in the last four years prices for interstate toll services have fallen by 17 percent (CPI: 74.5 in Feb. 1999 vs. 61.8 in Feb. 2003), while prices for wireless services, including interstate wireless services, have fallen by 25 percent (CPI: 89.7 in Feb. 1999 vs. 67.7 in Feb. 2003). In stark contrast, during the same four-year period, prices for landline local services *increased* by 19 percent (CPI: 167.1 in Feb. 1999 vs. 198.5 in Feb. 2003).

14 *See Public Notice,* Proposed Second Quarter 1999 Universal Service Contribution Factors, DA 99-455 (March 4, 1999).

15 *See Public Notice,* Proposed Second Quarter 2003 Universal Service Contribution Factors, DA 03-689 (March 7, 2003).

Two points should be uncontested and should form the foundation of any Commission order in this proceeding. First, to the extent there is instability in the USF program, the instability is due to dramatic growth in program disbursements, not in material changes to the contribution base. Second, and as a result, changing the contribution methodology will do ***nothing*** to provide long term stability to the USF program. USF fees will continue to increase so long as the Commission allows USF disbursements to grow unchecked – regardless of the specific contributions model used to support this growth. As a group of consumer advocates correctly observes:

> It should be clear that no mechanism can provide stability unless there is stability in the size of the USF. The size of the fund is a matter that is within the control of the Commission.[17]

T-Mobile made this very point in the pleadings it filed one year ago.[18] The Commission, however, chose not even to mention this critical point in its supplemental notice.[19] Nevertheless, the Commission cannot adopt an effective remedy until it correctly identifies the issue.

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16 *See* Budget of the U.S. Government, Analytical Perspectives, Fiscal Year 2004, Table 15-11, at 339.

17 National Association of State Utility Consumer Advocates Supplemental Comments at 13.

18 *See* VoiceStream Comments at 8-12 (April 22, 2002); VoiceStream Reply Comments at 5-9 (May 13, 2002).

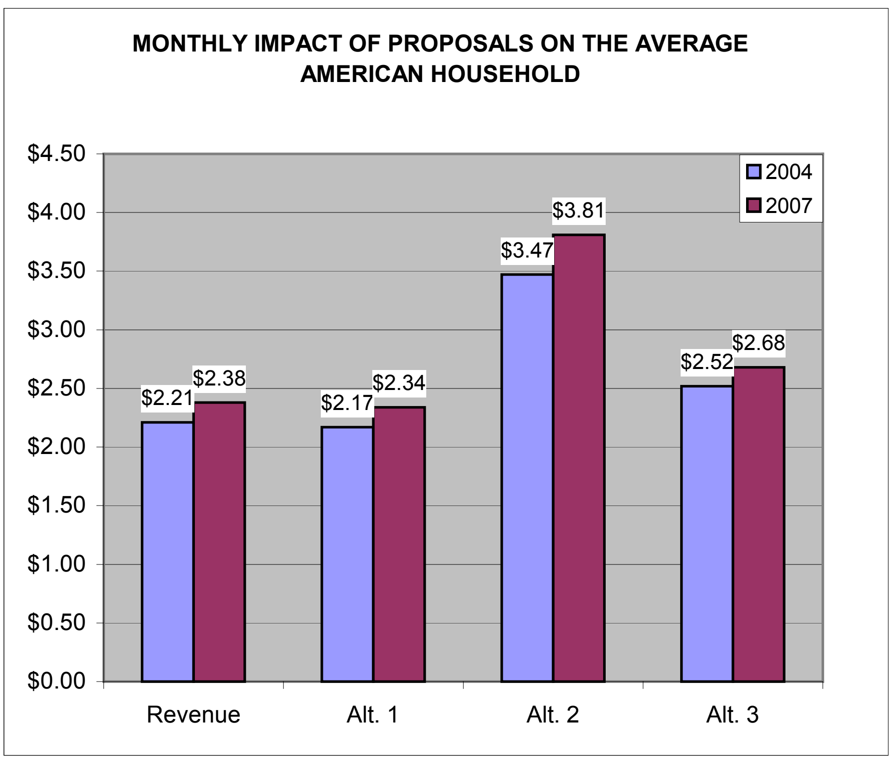
19 It is axiomatic that the FCC must respond to all significant comments. *See, e.g., Comsat* v. *FCC,* 836 F.2d 623, 634 (D.C. Cir. 1988); *ACLU* v. *FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987); *HBO* v. *FCC,* 567 F.2d 9, 36 (D.C. Cir. 1977).

II. A CONNECTIONS-BASED METHODOLOGY WOULD CONSTITUTE POOR PUBLIC POLICY

A. The Commission Should Reject Outright the "Capacity" Approach (Alternative 2) Because of the Harm It Would Impose on American Consumers

Commission staff has prepared an analysis of the assessments levels of the current revenue-based approach and the three connections-based approaches discussed in the supplemental notice.[20] The analysis demonstrates that one of the plans on the table -- the so-called "capacity" or "split connection" approach (Alternative No. 2) -- would have far more onerous consequences on the average American household compared to the other three approaches, as the following table depicts:

Table 1



Given that all four alternatives are designed to fund the same USF disbursement level, the Commission certainly should not adopt the one proposal that would require American households to pay approximately 50 percent more in USF charges than with the other three approaches. T-Mobile submits that the Commission should immediately take the "split connection" approach off the table.

B. Consumer Groups Identify Fatal Flaws with the Other Two Connections Proposals (Alternative Nos. 1 and 3)

The data in Table 1 above suggest at first blush that the current revenue-based system and connection alternatives 1 and 3 have a similar impact on American consumers. However, this data is for the "average" American household. With today's revenue approach, each household pays a different USF charge based on its level of interstate calling. A household with small interstate usage would pay a smaller amount than a household with heavy interstate usage. With connection proposals 1 and 3, in contrast, each household with the same number of connections would pay the identical USF fee – regardless of interstate usage.

As consumer groups point out, replacing the current revenue-based approach with a connections-based approach would result in a massive shift in USF obligations among households, because households with heavy interstate use would see a USF fee reduction while households with low interstate use would experience USF charge increases.[21] Simply put, "low-volume" households "would subsidize rate reductions for more profitable, high-volume" households.[22] Consumer groups further demonstrate that a large share of this USF fee increase will be borne by

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[20] *See* Wireline Competition Bureau Staff Study of Alternative Contribution Methodologies, CC Docket No. 96-45, FCC 03-31 (Feb. 26, 2003)("Staff Study").

[21] *See, e.g.,* Consumers Union, Texas Office of Public Utility Counsel, Consumer Federation of America, Appalachian People's Action Coalition, Center for Digital Democracy, Edgemont Neighborhood Coalition, and Migrant Legal Action Program ("Consumers Union *et al.*) Comments at 5-8.

[22] *Id.* at 5.

those consumers that can least afford to pay more – namely, "low-income and elderly individuals, that are disproportionately low-volume consumers":

> In sum, all three [connections] proposals would in effect require low-income and elderly persons – those customers that contribute the smallest amount of telecommunications activity or revenue and are least able to afford long-distance service – to subsidize price reductions for those customers best able to afford long-distance service. Adoption of any of these proposals would reverse the Commission's previous protections of consumers from inequitable cost-shifting by carriers, and would be contrary to section 254's requirement that the assessment methodology implemented by the Commission ensure that consumers receive telecommunications service at just, reasonable and affordable rates.[23]

The theory underlying universal service is that everyone benefits when more consumers are connected to the public network – a phenomenon economists call a "network externality."[24] The presumption underlying the public communications network externality is that the greater number of persons connected to the network "facilitates more intensive use of that network."[25] Thus, as Dr. Mark N. Cooper concludes, it is "reasonable to assume that those who actually use the network most intensively derive the greatest benefit from the network effect. Recovering the costs in proportion to use aligns costs and benefits most closely."[26]

Put another way, as service prices and government taxes and fees increase, low volume users of the network are more likely to drop off the network than high-volume users, because the latter derive a greater benefit from the network. Increasing the cost of service (*via* USF charges) for lower volume consumers in order to decrease the burden on high-volume consumers/businesses directly undermines the very purpose of universal service. This suggests that the Commission maintain the current revenue-based system so the costs of universal service are

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23 *Id.* at iv. and 8.

24 *See* Michael Kende, *The Digital Handshake: Connecting Internet Backbones*, OPP Working Paper No. 32, at 3-4 (Sept. 2000).

25 Affidavit of Dr. Mark N. Cooper at 2, *appended to* Consumer Union *et al.* Comments.

26 *Ibid.*

more closely aligned with the benefits of universal service. Universal service fees should not be allowed to have the perverse effect of causing people to drop from the network.

C. The Connections Alternatives Would Increase Carrier Administrative Costs Which Would Be Passed on to Customers in the Form of Higher Service Prices

The Commission appropriately requests comment on the administrative burdens that would be imposed by adopting the connections proposals.[27] Minimizing the costs in administering USF contributions is important because increased administrative costs are invariably passed on to customers in the form of higher service prices.

Proponents of connections-based methodologies assert that carriers would enjoy reduced administrative costs because such methodologies "would eliminate the need for contributors to distinguish between interstate and intrastate revenues, or revenues from telecommunications and non-telecommunications services, as required under the current methodology."[28] This claim is incorrect. First of all, the Commission has already recognized that this assertion is inaccurate, noting that a revenues based assessment methodology is "relatively easy to administer," while connection approaches would be "administratively difficult."[29] In this regard, the USF administrator, the Universal Service Administrative Company ("USAC"), has already advised the Commission that the use of a connection-based approach would create "significant administrative hurdles":

> Among other things, the Commission would be required to establish clear rules regarding which types of companies are subject to the contribution requirement and which carriers are responsible for certain customers or classes of customers. These issues could quickly become very complex.[30]

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27 *See Second FNPRM* at ¶ 74.

28 *See id.* at ¶ 70.

29 *First Universal Services Order,* 12 FCC Rcd 8776, 9207 ¶ 844, 9210 ¶ 852 (1997).

30 USAC Comments, Docket No. 96-45, at 16 (June 25, 2001).

USAC further noted that it would be "required to develop completely new billing and collection systems, and would also need to implement new audit systems, all of which would require significant one-time investments."[31] The USAC would "still be required to bill and collect from carriers on a monthly basis, making any reduction in administrative costs unlikely."[32] A connection-based approach would also create "difficulties in USAC and FCC verification of carrier line count data."[33] The USAC's conclusion regarding a connection-based approach:

> Administrative costs and complexity, as well as carrier gaming opportunities resulting from differing customer and service classifications, would increase accordingly."[34]

More importantly, *a connections-based methodology would necessarily* ***increase*** *carrier administrative costs because they would be required to maintain two administrative systems: one based on revenues* ***and*** *any new system that would be needed to meet the connections assessment approach that would be adopted.* As T-Mobile previously advised the Commission, even if the Commission were to use a connections approach for all federal fee programs,[35] carriers would still be required to distinguish intrastate from interstate revenues for state fee and sales tax programs, which remain largely based on intrastate revenues.[36] Thus, adoption of a connection approach for federal fees would subject carriers to the worst of both worlds – namely, they would still be required to report state/interstate revenues ***and*** they would have to use an entirely different approach for the federal USF program.

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31 USAC Reply Comments, Docket No. 96-45, at 14-15 (July 9, 2001).

32 USAC Comments at 17.

33 USAC Reply Comments at 14.

34 *Ibid.*

35 *But see Second FNPRM* at ¶ 77 (FCC proposes to retain revenues approach for other federal fee programs).

36 *See* VoiceStream Comments at 21 (April 22, 2002).

T-Mobile submits that sound public policy dictates that the Commission reject connections-based proposals.

III. THE REVISED CONNECTIONS PROPOSAL REMAINS UNLAWFUL

T-Mobile and other parties demonstrated last year that the original connections proposal was unlawful.[37] The Commission in response has revised its original proposal and seeks comment on three slightly different approaches. The Commission rightly acknowledges that these revised proposals may still be unlawful, and it specifically asks parties to address the lawfulness of the three approaches discussed in the supplemental notice.[38] T-Mobile submits that the newest proposals continue to be unlawful.

A. The Connections Proposals Are Inconsistent With the Requirements of Section 254(d) of the Act

Congress has imposed two requirements on any USF contributions methodology that the Commission may adopt: (1) "every" telecommunications carrier providing interstate service, other than carriers whose contributions would be *de minimis,* "shall contribute;" and (2) the contributions methodology must be "equitable and nondiscriminatory."[39]

The Commission's original connections proposal did not meet the "every carrier . . . shall contribute" requirement because the largest providers of interstate services, interexchange carriers ("IXCs"), would have been exempt from USF contributions for their interstate toll services.[40] The Commission now proposes a "minimum contribution obligation on all providers" in order to

[37] *See, e.g.,* VoiceStream Comments at 12-17 (April 22, 2002); VoiceStream Reply Comments at 2-12 (May 13, 2002).

[38] *See Second FNPRM* at ¶¶ 71 and 73.

[39] 47 U.S.C. § 254(d). *See also id.* at § 254(b)(4).

[40] The statutory directive is clear: "every" carrier "shall contribute." The IXC argument that the FCC should ignore this ambiguous directive, *see* AT&T Comments at 39-43; WorldCom Comments at 26-30, will only guarantee that the FCC order will be vacated. *See* VoiceStream Reply Comments at 3 (May 13, 2002), discussing *MCI* v.

address this defect in the original proposal.[41] The addition of this "mandatory minimum contribution" may literally meet the "every carrier . . . shall contribute" statutory requirement, but the "mandatory minimum contribution" proposals that the Commission has identified now fail the "equitable and nondiscriminatory" statutory requirement.

Currently, all carriers with interstate revenues pay a 9.1 percent USF contribution on those revenues. Under the "mandatory minimum contribution" proposals being discussed, the rate for IXCs might fall to one percent – that is, IXCs would pay 89 percent less in contributions than they pay today.[42] If it is "equitable and nondiscriminatory" for IXCs to pay 9.1 percent – a point that cannot be seriously contested, since all other carriers also pay 9.1 percent on their interstate revenues – it cannot by definition be "equitable and nondiscriminatory" for IXCs to pay only one percent.[43] Indeed, if IXCs pay only one percent, other providers of interstate services must necessarily pay more than the current 9.1 percent to make up the shortfall if current USF disbursements are to be maintained.

Courts have held that a contributions methodology fails the statutory "equitable and nondiscriminatory" requirement if it damages some carriers "more than it harms others."[44] Any approach where the industry segment providing more interstate services than any other segment pays only a "minimum" contribution would not satisfy this statutory requirement.

Another fatal flaw with the connections approaches is that the Commission provides no explanation for how it will calculate the assessment rate for each connection. This calculation is

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AT&T, 512 U.S. 218 (1995)(Supreme Court vacates FCC order because FCC ignores the statutory command, "shall.").

41 *See Second FNPRM* at ¶¶ 75 and 96.

42 *See Second FNPRM* at ¶ 78.

43 Remarkably, some IXCs object to paying even a "minimum" contribution. *See* WorldCom Comments at 32-34.

44 *Texas Office of Public Utility Counsel* v. *FCC,* 183 F.3d 393, 435 (5th Cir. 1999).

critically important because the rate level will determine the size of the "residual" requirement that will be supported by multiline businesses. From what T-Mobile can ascertain, the assessment level proposed for ordinary "connections" and, as a result, the residual sum paid by multiline businesses, is completely arbitrary.

Finally, as T-Mobile has previously explained,[45] the Commission needs to examine universal service contributions as a whole, including contributions made to intrastate USF programs. Even if the Commission could develop a connections approach that treats all carriers equally at the federal level, the fact remains that most state USF programs remain revenue based. The combination of a federal connections approach with state revenues approaches would have the effect of giving carriers like IXCs that principally provide interstate services an enormous competitive advantage in the market.

B. The Commission Has Previously Ruled that Connections Proposals Are Not Competitively Neutral

Congress has adopted certain principles to govern any universal service program, including that "all" carriers should contribute on "an equitable and nondiscriminatory" basis,[46] and it gave the Commission the authority to establish additional principles.[47] Pursuant to this authority, the Commission has adopted as an additional principle "competitive neutrality," defined as rules that "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[48] The Commission has already held that a con-

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45 *See* VoiceStream Comments at 13 (April 22, 2002); VoiceStream Reply Comments at 11 (May 13, 2002).

46 *See* 47 U.S.C. § 254(b)(4).

47 *See id.* at § 252(b)(7).

48 *First Universal Service Order,* 12 FCC Rcd at 8801 ¶ 47.

nections-based methodology – which it called at the time a "per-line" approach – would "not [be] competitively neutral."[49]

The Commission has yet to identify a change in circumstances that would justify a different legal conclusion. The Commission's notice suggests that a change in approach may be warranted because there is an increased use of bundled packages which contain both state and interstate telecommunications services.[50] This, however, is not a material change of decisional significance. Indeed, the Commission explicitly recognized in holding that connections methodologies were not competitively neutral that, with the development of competition, carriers would "increasingly offer bundled services for flat-rate monthly charges."[51]

If connections-based methodologies were deemed in 1997 to contravene the competitive neutrality principle, as the Commission determined, such approaches still contravene the competitive neutrality principle today.

C. The Connections Proposals Also Raise Substantial Issues Under Section 2(b) of the Act

The Supreme Court has declared that Section 2(b) of the Communications Act "fences off from FCC reach or regulation intrastate matters – indeed, including matters 'in connection with' intrastate service."[52] Appellate courts have specifically held that the inclusion of intrastate revenues in the calculation of federal USF contributions "easily constitutes a 'charge . . . in connection with intrastate communication service" and as a result, such contribution methodologies contravene Section 2(b) of the Act.[53]

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49 *First Universal Service Order,* 12 FCC Rcd at 9210 ¶ 852.

50 *See Second FNPRM* at ¶ 3.

51 *First Universal Service Order,* 12 FCC Rcd at 9210 ¶ 852

52 *Louisiana Public Service Comm'n* v. *FCC,* 476 U.S. 355, 370 (1986).

53 *See Texas Office of Utility Counsel* v. *FCC,* 183 F.3d 393, 447-48 (5th Cir. 1999).

Any connections approach necessarily would be based on intrastate usage because it would assess all connections to the network, including those that have no interstate usage. As AT&T Wireless notes, "just as 'the inclusion of intrastate revenues in the calculation of universal service contributions easily constitutes a "charge . . .in connection with intrastate communications service,"' an assessment based on connections is a "*charge*" and, to the extent the services provided over those connections are intrastate, the charge is '*in connection with intrastate communications service*.'"[54]

IXCs counter by asserting that *NARUC* v. *FCC,* 737 F.3d 1095 (D.C. Cir. 1984), which affirmed the use of fixed subscriber line charges ("SLCs"), confirms that Section 2(b) does not prevent the Commission from assessing flat-rated charges unrelated to interstate usage.[55] The IXCs are mistaken, for the *NARUC* court found that Section 2(b) had no relevance to the SLC charges at appeal.

At issue in *NARUC* was the recovery of that portion of a LEC's loop costs that were assigned to the <u>*interstate*</u> jurisdiction. The Court held that state arguments suggesting that SLCs somehow implicated intrastate plant and services (and, therefore, Section 2(b)), was factually incorrect, because SLCs were designed to recover costs of network plant allocated to the interstate jurisdiction. The Court further affirmed the use of a flat-rated cost recovery mechanism because, it noted, a LEC's customer's use of a loop has no correlation to the costs of the loop or the need of the LEC to recover these costs:

> The end user charge reflects costs caused not by a subscriber's actually making interstate calls, but by the subscriber's connection into the interstate network, which enables the subscriber to make interstate calls. The same loop that connects a telephone subscriber to the local exchange necessarily connects that subscriber into the interstate network as well, as would the need to recover those costs. * * *

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54 AT&T Wireless Comments at 2-3 (emphasis in original).

55 *See* AT&T Comments at 45; WorldCom Comments at 30-31.

> [Loop costs] must be recovered regardless of how many or how few interstate calls (or local calls for that matter) a subscriber makes. * * * A subscriber's choice not to make or receive interstate calls, however, would not reduce the costs of that subscriber's loop; the local telephone plant costs would remain unchanged. *Id.* at 1113-15.

The *NARUC* case thus has no relevance to the universal service contributions methodology that the Commission is currently considering. And specifically, this decision does not address the Section 2(b) problem with contributions-based methodologies.

IV. THE PUBLIC INTEREST WOULD NOT BE SERVED BY THE UNCERTAINTY THAT WOULD BE CREATED DURING THE PENDENCY OF AN APPEAL OF ANY ORDER ADOPTING A CONNECTIONS APPROACH

A Commission order adopting any connections-based approach will be appealed, as Commissioner Abernathy recently acknowledged.[56] Even if the Commission believes that such an approach is lawful, it must recognize that powerful legal arguments can be advanced that a connections-based methodology is unlawful. It is possible (if not likely) that the Commission's order will be stayed during the pendency of the appeal. But there will be extensive uncertainty (and the expenditure of considerable administrative expense) even if the order is not stayed during the appeal. T-Mobile submits that the public interest would not be served by such an uncertainty in a program as important at the USF.

The USF program unquestionably is in need of reform. Total disbursements should be capped while the program is comprehensively reviewed. Given that the federal USF program generates the overwhelming bulk of total universal service support, the concept of separate state universal service programs should also be reexamined.

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[56] *See* RCR WIRELESS NEWS, *Burns Calls for Universal-Service Summit with FCC*, at 7 (April 7, 2003).

The Chairman of the Senate Communications Subcommittee recently proposed a summit to consider reforms to universal service.[57] The Commission should encourage the holding of such a summit and participate actively in it. T-Mobile submits that the public interest would be better served if, rather than attempting to justify radical decisions of questionable legal authority, the Commission works with Congress to reform the current USF program.

V. CONCLUSION

The current revenues-based contributions methodology certainly is not perfect. But the approach is lawful and meets the statutory requirements. And, the Commission must avoid letting the "perfect becoming the enemy of the good."

The Commission recently modified the current revenues-based methodology in an attempt to improve the USF program and thereby both "sustain the universal service fund and increase the predictability of support."[58] The Commission should not overhaul the contributions system until the new modifications that it has made are given an opportunity to be implemented, and a track record is developed as to their strengths and deficiencies. As CTIA observes,

> [T]he Commission should give the modified revenue-based assessment system a reasonable opportunity to work, rather than immediately seeking a new assessment system that will inevitably cause carriers to retool billing systems again and result in substantial customer confusion.[59]

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57 *See* RCR WIRELESS NEWS, *Burns Calls for Universal-Service Summit with FCC*, at 7 (April 7, 2003).

58 *See USF Order,* FCC 02-329 at ¶¶ 1 and 3 (Dec. 13, 2002).

59 Cellular Telecommunications & Internet Association Comments at 3.

T-Mobile submits that the Commission's finite resources are better expended on undertaking a comprehensive review of the growth in the USF fund.

Respectfully submitted,

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